

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 04 TEGUCIGALPA 000363

SIPDIS

STATE FOR EB/TRA, WHA/EPSC, AND WHA/CEN
STATE FOR EB/TRA (DHAYWOOD)
TREASURY FOR DDOUGLASS
COMMERCE FOR AVANVUREN, MSIEGELMAN
STATE PASS AID FOR LAC/CAM

E.O. 12958: DECL: 02/14/2015

TAGS: [EWWT](#) [ETRD](#) [ECPS](#) [EINV](#) [PGOV](#) [KMCA](#) [HO](#)

SUBJECT: HONDURAS: PORT FEES: THE HONDURAN PRIVATE SECTOR
GIRDS ITSELF FOR BATTLE

REF: A. A) 04 TEGUCIGALPA 331
[B. B\) 04 TEGUCIGALPA 341](#)
[C. C\) 04 TEGUCIGALPA 2165](#)
[D. D\) 04 TEGUCIGALPA 2267](#)

Classified By: Economic Chief Patrick Dunn for reasons 1.4 (b) and (d)

[11.](#) (C) Summary: The GOH has recently approved a USD 55 per container fee for x-ray scanning at Puerto Cortes (Ref A). This fee, if passed on to port users, would nearly double port costs, rendering the port uncompetitive and resulting in trade and investment diversion away from Honduras (Ref B). The private sector has united in opposing this new fee, though there is deep pessimism that the GOH can be convinced to discuss these fees and their potentially catastrophic impacts in good faith. End Summary.

[12.](#) (C) Background: In December 2004, the GOH National Congress approved legislation agreeing to pay a hefty per-container fee of USD 18 for empty containers and USD 37 for loaded containers for x-ray scanning. The current law obligates the Ministry of Finance to pay these fees to the service provider but is silent on the question of whether these costs will then be passed on in whole or in part to importers and exporters. The decree containing the contract terms and fees, already approved by the National Congress, was transmitted in mid-January to President Maduro, who signed it despite a written request from the national umbrella group for private enterprise (COHEP) strongly urging him to veto the bill. The Presidency has now sent it on to the Ministry of Finance to be published in the Gazette (the GOH Federal Register equivalent). Upon publication, the contract takes effect.

Private Sector: "We will not obey."

[13.](#) (C) In a marathon 3 hour strategy session on February 10, members of Honduras' economic elite met to discuss their response to the impending port fees. Representatives of the Honduran Private Enterprise Council (COHEP), the Honduran Industrialists Association (ANDI), the Chamber of Commerce of Cortes, and AmCham members Dole and Chiquita were joined at the meeting by economic and political heavyweights Miguel Facusse, Adolfo Facusse, and Congressman Oswaldo Ramos Soto. Little dissent was heard around the table, as all present agreed on their opposition to the new fees as non-transparent and potentially economically devastating.

[14.](#) (C) Chairing the meeting and, characteristically, leading the charge, Adolfo Facusse, President of ANDI, laid out the private sector's objections to the proposed fees. First of all, he said, the UNDP-managed bid solicitation was non-transparent and the private sector's "right" to know what was going on was violated. (Comment: This is a favorite complaint of Facusse's (Refs C and D), but this debate has long since been closed and is not at the heart of the present problem. It is unsurprising that he took this opportunity to rail once again against the UNDP-managed bid solicitation process, but the others present wisely decided that basing their port-fees complaint on this stale issue would be a losing strategy. End Comment.) But at the heart of this shared concern, he said, is that the high fees will price Honduran ports and Honduran producers out of the market. With these new fees, Facusse said, "it will cost more to ship from Puerto Cortes to New Orleans than from Hong Kong to Los Angeles -- and that conspires against free trade."

[15.](#) (C) Facusse then highlighted complaints about the scope, goals, and process of the port scanning project. He noted: The objective of scanning 100 percent of containers is too costly, and goes well beyond what any other country does. If the goal is to increase customs revenues, then the increased collections and fines for evaders should be used to finance the project. If the goal is security, the GOH itself should be responsible for the fees, and the process should be run through the Port Security Commission, not the tax authority (the DEI) as is currently planned. More attention should likewise be paid to regulating the scanning contractor, since

the government is in effect establishing a monopoly enterprise. While the private sector supports increased security and a crackdown on customs fraud, he continued, implementing these measures only at Puerto Cortes will not accomplish these goals, and will make the port less competitive both nationally and regionally. Finally, he said, there is no defined relation between the cost of the project and the fees. His conclusion, he said, is that this is a sweetheart contract for someone close to the GOH. Summing up his position, Facusse defiantly declared that, "we will not obey this law, even if that means we need to go elsewhere" for port services.

16. (C) The COHEP representative concurred and, calling the fees "extremely onerous," asked why exporters and legitimate importers should have to pay. These high fees are, for fruit producers, "the difference between staying in the market or not." Moreover, he noted, estimates seemed to indicate that the machinery would cost USD 4.0 million to install, and USD 1.5 million per year to operate, but at current volumes the contract would gross USD 10.5 million per year. Why are the fees so high, he asked. He closed by noting that the private sector was promised an opportunity to present its views and analyses to Congress before the contract was to be considered, but never received that chance. Instead, the contract was rushed through late at night near the end of the legislative session, as though it were urgent.

The Big Lie: "The U.S. Made Us Do It"

17. (C) The urgency, Congressmen were told, was because the security equipment was required by the U.S. Former tax director Mario Duarte reportedly testified that if the GOH failed to install this x-ray equipment, the U.S. "would de-certify Puerto Cortes the next day." Congressman Ramos echoed this version of events, saying that the entire Congressional ratification debate had centered on security and certification issues. The contract was passed, he said, "without the Congress understanding the consequences." (Note: Ramos then took the opportunity to bash the UNDP, and, even less helpfully, to again raise the red-herring of port scanning equipment posing a radiological hazard. End note.) Several others present took this as their cue to denounce the "fraud" behind the contract and to call for voiding the contract on this basis.

18. (C) EconChief then carefully clarified port security requirements and the USG role in port certification. Basic port security standards, he pointed out, are set by the International Maritime Organization (IMO). Certification of the port is actually a self-certification by the host-country government. The GOH self-certified in July 2004. The U.S. Coast Guard periodically checks foreign ports to verify they are in compliance with the IMO standards, but they are not responsible for "certifying" the port. Finally, there is no current IMO requirement for non-intrusive inspection (NII -- that is, x-ray or gamma-ray scanning). Therefore, any GOH claim that the scanners are required under current obligations or that the USG would "de-certify" Cortes without them are entirely incorrect.

19. (C) However, EconChief went on to say, some in the GOH and in the private sector have raised the possibility of applying for entry into the Container Security Initiative (CSI). To apply for this program, the port must indeed have NII available on site. Honduras is not currently a participant in CSI, and, as a small port, is unlikely to be added in the near future, according to the Department of Homeland Security. If the GOH intends to seek membership in CSI, it would then be accurate to say the USG requires scanning equipment. Upon hearing EconChief's explanation, one participant noted that it confirmed his understanding that there is no current requirement for this equipment, and any claims to such are "fraud." Even if the machinery is intended for a future CSI, he said, the costs and competitive disadvantages will be incurred today. "It's like preparing for your daughter's quinceanera (coming out party at age 15) by buying her a wedding dress."

GOH Belatedly Offers to Talk Price

110. (C) Several present noted the sharp price differential these fees would create vis-a-vis other regional ports (see Ref B), and agreed with Facusse that if the fees are passed on to port users they might stop using Puerto Cortes in favor of one of the other ports. However, as former ports Director Fernando Alvarez pointed out to EconChief on January 28, there's not enough spare capacity at these other ports to absorb Cortes' traffic. These physical realities dictate that most private sector shippers cannot, in fact, simply abandon Cortes. The only short-term solution, he said, will be negotiated rates for x-ray scanning.

111. (C) Such negotiations have already been launched by the GOH. EconChief spoke on January 31 with Arturo Alvarado,

former Minister of Finance and the man charged with chairing the working group to explore how these rates will be assessed. Alvarado said that the focus of the group will be on determining if any current activities and their fees can be eliminated once scanning begins. In this way he seeks to identify, and minimize, the incremental cost of the new service. Ideally, he said, there would be no net impact on importers and exporters. Alvarado gently criticized the business community for its outspoken condemnation of the new fee even before talks had begun, though he admitted that as long as the issue remains unresolved they will be "concerned." However, he said, to discuss the matter intelligently, the working group first needs cost data and has set itself the task of collecting these data. Unfortunately, said Alvarado, the private sector has yet to even name its two representatives to the working group, much less begin data collection. Though the draft contract gives the consortium up to eight months to begin operations, Alvarado understands the current plan calls for start-up in May. There is little time to reach an agreement on the fees, he noted, and much work yet to be done.

12. (C) When informed in sidebar of Alvarado's views, the COHEP representative disputed Alvarado's claims, saying that COHEP had named its participants to the commission and had already gathered its own data on port costs. He rejected as a waste of time repeating the data gathering exercise jointly with the Commission. Even if they were to do so, he doubted the various entities at the port would be likely -- with the former Minister of Finance standing there -- to give a full accounting of all the "hidden costs" of getting a container through port. He also rejected Alvarado's assertion that cuts in other costs would make up for a significant part of the new fees. There is simply no way, he said, to reduce the current USD 8 security fee enough to make up for the new USD 55 fee. (Note: In a separate conversation on February 8, Port Authority Economist Mohaad Merzkani made similar remarks when he observed that the GOH currently inspects only 30 percent of containers. Even if the GOH offered to pick up a similar percentage of the cost of the new program, that would leave 70 percent of the costs on the shoulders of port users -- still more than enough to inflict serious damage on Puerto Cortes' market share, and on importers' and exporters' profitability. End note.)

13. (C) ANDI's representative to Alvarado's commission then spoke, outlining the work of the commission to date. If this is already the law, Facusse asked, "What can be done? The Congress was fooled." The ANDI representative responded that while the contract has been approved by Congress and signed by the President, it will not enter into force until publication. Unfortunately, the only person who can stop publication now is the President himself, and he wants it to go forward, so seeking a delay in publication is unlikely to work. The appropriate question for the commission, he said, is who pays and how the cost to the private sector can be minimized. "While we sit here and debate, the government (of Honduras) is finalizing this contract." Once that happens, he said, the GOH is locked in because of high breach of contract penalties.

14. (C) But that will not be the end of the battle. The contract does not specify that the fees will be passed from the GOH to port users. With little hope of stopping the contract itself, he said, the private sector should focus its efforts on minimizing the cost passed through to port users. The COHEP representative agreed that stopping the contract would be difficult, saying it would be pointless to raise this with Minister of the Presidency Luis Cosenza or Minister of Finance William Chong Wong, since they are "absolutely convinced" of the correctness of the project and are not listening to the private sector's concerns. COHEP has made these arguments to Cosenza before, he said, but Cosenza is "obstinate" in his desire to move the project forward. (Note: Cosenza had displayed this same dismissive attitude when EconChief raised these concerns with him on January 21. End Note.)

So What Now?

15. (C) This apparent consensus to the contrary, the group quickly determined that it should nevertheless try to block publication of the contract, to prevent its entry into force. Immediately following the meeting the group drafted an urgent appeal for a meeting with President Maduro, to ask him to delay publication of the contract until the fees can be analyzed and a method for apportioning them worked out. To reinforce the urgency of the matter, various members will grant interviews to the press, and the group will seek to publish an op-ed on the subject in the major newspapers. The group is still investigating the possibility of a court challenge, with some opining that it is worth pursuing. Others felt that if the law hasn't been published it does not officially exist, and therefore cannot be challenged in court, but once it is published it is too late and the damage

is done. (The way to stop GOH publication of the new contract, Facusse half-joked as the meeting broke up, would be to have the workers at the printing plant suddenly go on strike. Those labor leaders always loudly oppose CAFTA, he said, "why don't they do something useful for a change?")

16. (C) In sidebar conversations following the meeting, EconChief suggested that the group clearly separate the question of the value of port scanning from the cost of such a system. Arguing against improved security or reduced customs fraud, he said, is unlikely to be a persuasive approach. Better to focus on the economic impacts, the loss of competitiveness, and the possible diversion of productive investment if the fees are set too high. Finally, he recommended the group participate meaningfully in Alvarado's commission, and come prepared with well-researched projections of economic and financial impacts to buttress their case. Both the U.S. and Honduras have an interest in a flourishing Honduran economy, and a competitively priced Puerto Cortes is key to this goal. Post has raised this concern with the GOH already, and will continue to do so, but it is up to the Honduran private sector itself to forcefully drive home the point that Cortes must remain competitive if Honduras is to survive and prosper.

Pierce
Pierce